

TITLE 16. BOARD OF OCCUPATIONAL THERAPY
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed actions.

PUBLIC HEARING: The Board will hold a public hearing on January 14, 2003, beginning at 1:00 p.m., in the Board's office located at 444 North Third Street, Suite 410, Sacramento, California, 95814. The conference room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed actions described in the Informative Digest. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD: Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed actions to the Board, addressed to Jeff Hanson, 444 North Third Street, Suite 410, Sacramento, California, 95814, no later than 5:00 p.m. on January 14, 2003, or at the hearing. Written comments may also be sent to Jeff Hanson via electronic mail at Jeff_Hanson@dca.ca.gov or faxed to (916) 445-6167.

CONTACT PERSONS: Inquiries including questions regarding the substance of the proposed regulatory actions may be directed to Jeff Hanson, 444 North Third Street, Suite 410, Sacramento, California, 95814, (916) 324-4353, FAX (916) 445-6167, or email Jeff_Hanson@dca.ca.gov. The back up person is Gretchen Kjose, (916) 322-3394 or email Gretchen_Kjose@dca.ca.gov.

AUTHORITY AND REFERENCE: Pursuant to the authority vested by sections 2570.10, 2570.13 and 2570.20 of the Business and Professions Code, and to implement, interpret or make specific sections 2570.2, 2570.3, 2570.4, 2570.5, 2570.10, and 2570.13 of the Business and Professions Code, the Board is considering adding to Division 39, Title 16, of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: On January 1, 2001, Senate Bill 1046 (Murray, Chapter 697, Statutes of 2000) took effect, establishing the Board whose duties are to license occupational therapists, certify occupational therapy assistants and regulate the occupational therapy profession. This law gives the Board authority to adopt, by regulation, continued competency requirements as a condition of license renewal and requires the Board to adopt rules necessary to assure appropriate supervision of occupational therapy assistants, limited permit holders, students, and aides. The proposed regulatory actions are necessary to implement this legislation.

Section 4160: Existing law gives the Board authority to establish rules regarding continued competency requirements. This proposed regulation would define "professional development" as activities or programs engaged in to increase knowledge, skills and abilities. It would also define Level II students as those students completing the fieldwork portion of an entry-level academic degree program, supervision of whom would be considered a professional development activity.

Section 4161: This proposed regulation would require the occupational therapy practitioner to demonstrate continued competency by participating in professional development activities; would specify what constitutes a professional development activity; would identify the unit of measurement as a professional development unit (PDU); would require the practitioner to obtain 12 PDUs during the renewal period, six of which must be directly related to the delivery of occupational therapy services; and would provide that the continued competency requirements would not apply to the first renewal period following initial licensure.

Section 4162: This proposed regulation would specify the type of information to be provided to the Board by the occupational therapy practitioner at the time of renewal, would require the practitioner to maintain records on professional development activities for a period of four years following the renewal period, would provide that a maximum of 3 PDUs could be carried over to the next renewal period, and would specify that a practitioner unable to provide proof of having completed the continued competency requirements would be subject to citation and or administrative fine or other disciplinary action.

Section 4163: This proposed regulation would provide that, at the time of renewal, the occupational therapy practitioner could request an exemption from meeting the continued competency requirements if, during the renewal period, the practitioner was in another country for one year or longer, engaged in military or missionary service for one year or longer, was mentally or physically incapacitated or was caring for a mentally or physically incapacitated family member for one year or longer during the renewal period.

Section 4180: Existing law requires the Board to develop regulations regarding supervision requirements for occupational therapy assistants, limited permit holders, students and aides when providing direct client related services. This proposed regulation would define “client related” and “non-client related” tasks, Level I and Level II students, and what constitutes “periodic” review for supervision purposes.

Section 4181: This proposed regulation would specify what constitutes appropriate supervision of occupational therapy assistants; would provide that supervising occupational therapists be responsible for all occupational therapy services provided by occupational therapy assistants, limited permit holders, students, and aides; would provide that occupational therapy assistants could supervise occupational therapy assistant limited permit holders, Level I occupational therapy students, Level I and II occupational therapy assistant students, and aides providing non-client related tasks; and would require supervising occupational therapists to determine that those under their supervision possess the requisite certificates or permits to provide occupational therapy services.

Section 4182: This proposed regulation would provide that the supervising occupational therapist determine the treatments the occupational therapy assistant could perform based on the clinical complexity of the client, the skill level of the occupational therapy assistant, and the client’s need for continual reassessment during treatment. This regulation would specify that the supervising occupational therapist be responsible for interpretation of referrals or prescriptions for occupational therapy services, interpretation and analysis for evaluation purposes, and

development, interpretation, implementation and modification of the treatment and discharge plans. It would also provide that the occupational therapy assistant could participate in these processes.

Section 4183: This proposed regulation would specify that the Level II occupational therapy student could, at the discretion of the supervising occupational therapist, provide occupational therapy services commensurate with his or her education and training. It would also require that all documented client-related services provided by limited permit holders and students be reviewed and cosigned by the supervising occupational therapist.

Section 4184: This proposed regulation would specify that the primary function of an aide is to perform routine tasks related to occupational therapy services; would identify the client-related tasks that could be delegated to an aide and the factors that must be considered before delegation; would specify that an aide could **not** perform occupational therapy evaluative procedures, initiation, planning, adjustment, or modification of treatment procedures, act on behalf of the supervising occupational therapist in any matter related to treatment that requires decision making, and use physical agent modalities; and would require that all documented client-related services be reviewed and cosigned by the supervising occupational therapist.

DISCLOSURES REGARDING THE PROPOSED ACTION: The Board has made the following initial determinations:

- Mandate on local agencies or school districts: None
- Costs or savings to any state agency: None
- Costs to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None
- Other non-discretionary costs or savings imposed on local agencies: None
- Costs or savings in federal funding to the state: None
- Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None
- Cost impact on a representative private person or business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of this regulation would not: (1) create or eliminate jobs in California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently operating in California.
- The proposed regulation does not mandate the use of specific technologies or equipment.
- Significant effect on housing costs: None

EFFECT ON SMALL BUSINESS: The Board has determined that the proposed regulatory action will not have an adverse impact on small businesses because the regulation does not directly regulate small businesses, does not require reports or any other compliance activities.

CONSIDERATION OF ALTERNATIVES: In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternatives it considered or that have otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or as effective and less burdensome on affected private persons than the proposal described in this Notice.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: After considering all relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Board adopts the regulation as revised. Any such modifications will be posted to the Board's web site. Please send requests for copies of any modified regulation to the attention of Jeff Hanson at the address indicated above. The Board will accept written comments on any modified regulation for 15 days after the date on which they are made available.

INITIAL STATEMENT OF REASONS AND TEXT OF THE PROPOSED REGULATIONS/INTERNET ACCESS: An Initial Statement of Reasons and the text of the proposed regulation have been prepared and are available from the contact person named in this notice. The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at the address listed above. As of the date this notice is published in the CRCN, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulation. In addition, the above-cited materials may be accessed through the Board's web site at www.bot.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE: Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the web site listed above.